(1)

Supreme Court, U.S.
FILED

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NO.

IN THE

Supreme Court Of The United States

Vernon Mills, PRO SE

Petitioner

v.

Wiser Oil Co,

On Petition For Writ Of Certiorari
To The (Commonwealth of Kentucky
Court Of Appeals)

PETITION FOR WRIT OF CERTIORARI

Vernon Mills Pro Se
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11 pp

Questions Presented for Review.

(1) On Aug 7,1997 the Knox District Court Division II, entered an Order for the Estate of Arthur L.Phipps, "Deceased" to be sold at public sale by Ford Brothers Inc., an auction company.

(2) Prior to this auction the Estate had a surveyor subdivide the subject property into a main tract and several smaller tracts and in conjunction with Ford Brothers Inc., the estate decided that whoever purchased this main tract at the sale also would receive all of the oil and gas rights held by the Estate since this was where the gas well was physically located.

(3) Did the Knox Circuit Court have the right to change the terms of the District Court's Order over a year later, the Estate had decided to sale all of the Oil and gas rights with the main tract, as it was sold on Aug, 9, 1997,

(4) Did the Knox Circuit Court have the right to over rule the federal and state laws that the lease was subject to with Wiser Oil Co. the lessor was to be payed 1/8 % of the royalty Monthly, A Breach of lease Complaint was filed on Wiser Oil Co, for not paying the royalties for over a year after the perchaser of the 150 acres of Oil and gas rights. C.A.La. 1981. under Louisiana law, a mineral lessee is required to pay production royalties promptly, and his failure to do so is breach of lease, and entitling lessor to cancel it, NUNEZ V. SUPERIOR OIL CO, 644 F.2d 534.

D.C. TEX. 1985. Lessee's failure to strictly observe terms, covenants, conditions or to compensate lessor fully for royalties entitled lessor to terminate lease and

recoverdifferance between all proceeds attributable to natural gas produced from wells on lease since that date, less lessee's reasonable cost of operation and royalties awarded under instant judgment for gas produced from lease. Sowell v.Natural Gas Pipeline Co. of America, 604 F.SUPP. 371.

(5) Did the Knox Circuit Court have the right to dismiss the complaint of Breach of lease Contract filed by the petitioner, on summary judgment pursuant to CR 12.03. by a motion filed by the respondent on a argument that the petitioner only purchased 109.32 acres of the original 150 acres of land, the argument pursuant to KRS 56 is facts for a jury to deiced,even though doubt as to the existence of a genuine issue of material facts may be small, a litigant as against summary judgment has a right to trial were there is doubt about the facts. Simpson v. Graves, 451 S.W. 2d 399 (ky. 1970). In passing upon a motion for summary, it is no part of the court's function to deiced issues of facts but only to determine wheter there are such issues to be tried.

MITCHELL V. JONES, S.W.2d 716 (ky. 1955). If summary judgment is moved by either party solely on the basis of the complaint, answer, and other pleading,if any, the motion is functionally equivalent to motion for judgment on pleadings under CR12.03, and should be denied if, as against the moving party, the pleadings raise any issue of material fact. La Vielle v.Seay, 412 S.W.2d 587 (ky.1967).

(6) Did the district court have the right to enter an order approving sale of real property of the estate of Arthur L. Phipps, to sell the gas rights with the main tract of land as it did. pursuant to C.A.N.D. 1994. Once the mineral surface rights have been separated, two estates exist which are as distinct as they contained two parcels of land. SLAATEN V.

(iii).

CLIFF'S DRILLING CO. 748 F2d 1275.

(7) Did the Knox Circuit Court have the right to let the purchaser buy and pay for the150 acres of oil and gas rights that was approved to sale by the Knox District Court and let Wiser Oil Co. break all of the laws and the terms of that lease. and not let it go to a jury trial,

(8) Did the Knox Circuit Court, and the Kentucky court of appeals have the right to over rule the Federal and state law Slaaten v. Cliff's Drilling Co., 748 F.2d 1275. C.A.N.D. 1994. Once the mineral surface rights hav been separated, two estates exist which are as distinct as they contained two parcels of land, and the Kentucky,Supreme Court Denying Motion for Discretionary Review of Order Denying Petition For Rehearing From the Court of Appeals

(9) The federal question was timely and properly raised in the Knox Circuit Court, on an Aug , 31, 1999 motion to set aside order, and the Appeal to the Kentucky Court of Appeals.

this Court has jurisdiction to review the judgment on a writ of certiorari. so that justice can be served and the laws can be applyed as they are written to be Constitutional.and Ican have all the property that I purchased and paid for on Aug, 9, 1997.

(1).

(a) This Court must see that the Knox Circuit Court, and the Kentucky Court OF Appeals, failed to review all of the file in this case and apply the laws as they are written to be Constitutional.

NOT ONE OF THE COURT'S THAT HAS DECIED THE MERITS OF THIS CASE HAS SAW THAT WISER OIL COMPANY DID NOT PAY THE ROYALTIES AS THE LEASE AGREED TO PAY THEM MONTHLY, THERE IS NOT ANY THING IN THIS LEASE SAYS WISER OIL CAN SALE GAS FROM THIS "WELL" FOR OVER A YEAR, AND THEN HAVE THE ATTORNEY SAY THE REASON THEY DID NOT PAY THE ROYALTIES, WAS THAT THE PLAINTIFF DID NOT PURCHASE ALL OF THE OIL AND GAS RIGHTS , THAT WAS A BREACH OF THE LEASE BY "WISER" BY THE LAWS IN THIS CASE THE LEASE WAS BREACH BY LAW BEFORE THE CIVIL ACTION WAS FILED.THE DEED OF CORRECTION SAYS AS WELL AS SOLE AND EXCLUSIVE RIGHTS TO A GAS WELL AND THE ROYALTIES THEREON, INCLUDING ANY FREE GAS, HELD BY A.L.PHIPPS UNDER A LEASE WITH THE WISER OIL COMPANY DATED ON JANUARY 10, 1983.

(b) As a Disabled Vietnam Veteran with tumor's in both lungs from Agent Orange, I should have the right to petition a court to get the property that I purchased and paid for to leave my Kids, when I have every thing that the Commonwealth of Kentucky ask for to be the owner of the property, Ford Brothers, Inc.sales and purchase contract dated Aug, 9.1997, says that tract # 1 has gas lease to Wiser Oil Co.Affidavit of R.G regory Lathram, the Attorney for the estate saying that the estate and the Ford Brothers

Auctions sold Mr. Vernon Mills, all of the Oil and Gas Rights with the main tract of land that wa[illegible]rchased on Aug 9,1997, and it was publicly announce[illegible]rior to the sale that all of the oil and gas rights went with the main tract, just because I only have a six grade Education and filed the complaint as a "PRO SE LITIGANT" I should have the right to have what I purchased.

APPENDIX

The Knox Circuit Court , and the Kentucky Court of Apples failed to review all of the file in this case and the laws, and the Kentucky Supreme Court denying Discretionary review,

(a) Questions, and laws presented for review.....(i)(ii)(iii)

(b) Order's and Opinion Affirming.....1.2.3.4.5.

CONCLUSION

For the terms of the sales and purchased contract, that the Knox District Court Approved for to be sold on Aug, 9, 1997, and all of the laws federal and state that the Court's failed to apply to the case at hand this justice must applyed them as they are written to be Constitutional so justice can be served.

Respectfully Submitted,

Vernon Mills

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Date November 26, 2001.

COMMONWEALTH OF KENTUCKY
27TH JUDICIAL CIRCUIT
KNOX CIRCUIT COURT
DIVISION II
CIVIL ACTION NO. 98-CI-00477

VERNON MILLS — PLAINTIFF

VS. **ORDER**

WISER OIL COMPANY — DEFENDANT

* * *

This mater is before the court on motion of the defendant to dismiss this action.the plaintiff has filed a response as the parties have filed affidavits and interrogatories in support of their arguments, the court will treat the motion as one for summary judgment pursuant to CR12.03.Pursuant to an order of the Knox District Court, certain real property belonging to the estate of A.L. Phipps was sold at auction. the property, consisting of some 150 acres, was divided into one large tract and several smaller tracts.

The plaintiff purchased the larger tract and one of the smaller tracts. the total acreage purchased by the plaintiff was some 109.32 acres.

The land sold by the estate was subject to an oil and gas lease to wiser oil co. the land apparently contains a producing gas well which is located on the larger tract purchased by the plaintiff.

The January 10, 1983 oil and gas lease entered into by A.L. Phipps and wiser oil company provided that if the land was

divided that the land would still be developed and operated as one lease and that all royalties would be divided and paid to the separate owners based on thir percentage of creage.the lease was recorded in lease Book 67 at page 549, on January 14,1983.

The plaintiff conends that based on the sales and purchase contract entered by the Estate with the plaintiff, he is entitled to all the gas royalties generated by the entire 150 acre tract formerly owned by A.L.Phipps. the plaintiff also relies on an affidavit of R. Greogory Lathram, the attorney for the estate, which provides that the estste intended to award all oil and gas rights to the party who purchased the larger tract.

The August 9, 1997 sales and purchase contract the A.L.Phipps Estate entered into with the plaintiff said," tract" #1 has gas lease to wiser oil co." Tract # 1 is the larger tract purchased by the plaintiff.

The September 25, 1997 deed from the Estate of A.L. Phipps to the plaintiff made no mention of the rights to the natural gas.

After the sale. and presumably after the execution of all the deeds of conveyance, the estate, on February 28, 1998 purported to assing the plaintiff all its interest in the oil and gas lease.

As discussed above, an oil and gas lease was originally entered into between A.L. Phipps and wiser oil company. It is elementary that this lease could not be modified without the agreement of the parties.

The agreement of the estate in the sales and purchase contract that "tract" # 1 has gas lease to wiser oil co." was

unilateral modification of the lease and therefore not valid. Kentucky Home Mut. Life Ins. Co. V.Leitner, ky., 196 S.W. 2d 421 (1946).

It is also clear that upon conveying the real property in question in fee simple to the plaintiff and others purchasers, the estate no longer had any interest in the lease A.L.Phipps had entered into with wiser oil co. on February 28, at the time of the purported assignment, the estate simply owned no interest in the oil and gas lease to assign.

The plaintiff also contends he is entitled to free gas. the lease in question provided that in the event the land subject to the lease was subdivided that free gas would be provided to the primary residence. this is in conformity with Kentucky law which says that when the land is sold that the free gas privilege runs with the land that and goes with the dwelling located on the land at the time of the original lease. Coleman v. Lindsey, ky. App. 234 S.W.2d 950 (1950). It is uncontroverted that the former home of A.L. Phipps is not located on the land purchased by the plaintiff.

The motion of the defendant Wiser Oil Co. is **SUSTAINED** and the defendant is granted summary judgment.

This is a final and appealable order

This the 25 day of Auguest, 1999.

"s/ Judge Roderick Messer"
Knox Circuit Court -DIV.II

COMMONWEALTH OF KENTUCKY
27TH JUDICIAL CIRCUIT
KNOX CIRCUIT COURT, DIVISION II
CIVIL ACTION NO.98-CI-00477

VERNON MILLS PLAINTIFF

VS.

ORDER DENYING MOTION FOR RE-TRIAL

WISER OIL COMPANY, DEFENDANT

* * * * * * * * * * *

The plaintiff having made a motion for new trial pursuant to Civil Rule 60, and the defendant having filed an objection and response thereto, and the Court being otherwise fully and sufficently advised,

IT IS HEREBY ORDER that the plaintiff's motion for new trial pursuant to Civil Rule 60 is DENIED.

ORDER AND ENTERED this 5 day of may, 2000.

"s/ Judge Roderick Messer"
Knox Circuit Courrt

RENDERED: FEBRUARY 9, 2001;
NOT TO BE PUBLISHED

COMMONWEALTH OF KENTUCKY
COURT OF APPEALS
NO. 2000-CA-001214-MR

VERNON MILLS — APPELLANT

APPEAL FROM KNOX CIRCUIT COURT
HONORABLE RODERICK MESSER, JUDGE
ACTION NO. 98-CI-00477

V.

WISER OIL COMPANY — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: GUDGEL, CHIEF JUDGE; DYCHE AND MILLER, JUDGE.

MILLER, JUDGE: Vernon Mills brings this appeal from an August 27, 1999, summary judgment of the Knox Circuit Court. KY. R.Civ. P. (CR) 56. we affirm.

Appellant appeals Pro se. we declined to dismiss the appeal for failure to comply with appellate rules. we endeavor to understand the issues presented and decid the case on the merits.

On January 10, 1983, One A.L.Phipps, executed a certain oil and gas lease upon a 150-acre tract of land in Knox County,

Kentucky, to wiser oil company (wiser). the lease appears to be a standerd producers 88. cf. Vaughn v. Hearrell, ky., 347 S.W.2d 542 (1961) . it provides for the usual one-eighth landowner royalty, and it contains the standard "entirety clause," to wit:

> If the leased premises are now, or shall hereafter be, owned in severalty or in separate tracts, the premises nevertheless shall be developed and operated as one lease and all royalties accruing hereunder shall be treated as an entirety and shall be divided among, and paid to the separate owners in the proportion that the acreage owned by each separate owner bears to the entire leased acreage.

Production was obtained under the lease. subsequently, A.L. Phipps died. His estate sold the 150-acre tract of land in separated parcels. On September 25, 1997, Mills became the purchaser of two parcels, totaling 109.32 acres, the remaining parcels of Phipps' land were conveyed to other parties not involved in this litigation.

Mills brought the instant action against Wiser. therein, mills claimed entitlement to all the gas royalties generated by the entire 150-acre tract formerly owned by Phipps.on August 27, 1996, the circuit court entered summary judgment in favor of wiser and dismissed mills' claim. this appeal follows.

Summary judgment is proper were there exists no material issue of fact and movant is entitled to judgment as a mater of law. CR 56; Steelvest , Inc . v. Scansteel Service Center , Inc., KY., 807 S.W. 2d 476 (1991) . Specifically, mills claims the entitlement to the entire one-eighth roylaty payment under the wiser lease. He apparently predicates the claim upon two premises: (1) the production is, in fact located upon one of the parcels he purchased; and (2) on February 28, 1998, Phipps'

estate purported to assing to him all of its interest under the wiser leasehold.

The purpose of an entirety clause in an oil and gas lease is to protect the-lessee in the event the surface estate is subsequently parceled between separate owners. It assures that the lessee can always operate the leased acreage as a whole. See I. M. Alsip's Administrator v. Onstott, KY., 283 S.W. 2d 711 (1955) ; See also 38 AM .Jur. 2d GAS AND OIL 90 (1999) , and Annot., 48 A.L.R.3d 706 (1973) . In the event the surface is parceled, the separate owners will share the royalty pro rata according to the number of acres which each owns in the original leasehold. Each parcel owner, of course, takes his parcel subject to the terms and conditions of the original leasehold. Notwithstanding production (a gas well) is located on one of the parcels owned by mills, he, therefore, is entitled only to his pro rata portion of the royalty under the wiser lease.

Further, we believe mills is not entitled to the entire royalty by virtue of a purorted assignment , from the Phipps' estate. At the time of such assignment, the Phipps' estate had apparently sold all the lands encompassed in the leasehold. the record does not indicate otherwise. the sales did not reserve any portion of the landowner royalty under the wiser lease. perforce, said assignment from the Phipps' estate to mills transferred nothing.

We view mills' remaining arguments in this appeal to be without merit. upon examination of the entire record, we perceive no error by the circuit court.

For the foregoing reasons, the order of the Knox Circuit Court is affirmed.

ALL CONCUR .

BRIEFS FOR APPELLANT: BRIEF FOR APPELLEE:

Vernon Mills Pro se
Heidrick, Kentucky

Howard O. M ann
Corbin, Kentucky

COMMONWEALTH OF KENTUCKY
COURT OF APPEALS
NO. 2000-CA-001214-MR

VERNON MILLS — PLAINTIFF

APPEAL FROM KNOX CIRCUIT COURT
HONORABLE RODERICK MASSER, JUDGE
ACTION NO. 98-CI-00477

V.

WISER OIL COMPANY — APPELLEE

ORDER DENYING PETITION FOR REHEARING

* * * * * *

BEFORE: GUDGEL , CHIEF JUDGE; DYCHE AND MILLER, JUDGE.

The Court having considered the petition for Rehearing and being sufficiently advised, it is Order that the same is hereby Denied.

"s/ AEW,? DYCHE"
JUDGE, COURT OF APPEALS

Entered APR 27, 2001.

SUPREME COURT OF KENTUCKY

2001-SC-388-D

(2000-CA-1214-MR)

VERNON MILLS — MOVANT

KNOX CIRCUIT COURT

1998-CI-477

V.

WISER OIL COMPANY — RESPONDENT

ORDER DENYING DISCRETIONARY REVIEW

The motino for discretionary review of the decision of the Court of Appeals is denied.

ENTERED SEPTEMBER 20, 2001.

/S/ JNE ? LAMBERT

Chief justice